

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
(HOUSTON DIVISION)

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| CERDA INDUSTRIES, INC, A TEXAS  | § |                                |
| CORPORATION AND SHORMAX, INC. A | § |                                |
| TEXAS CORPORATION,              | § |                                |
|                                 | § |                                |
| PLAINTIFFS,                     | § |                                |
|                                 | § |                                |
| VS.                             | § | CIVIL ACTION NO. 4:08-CV-01127 |
|                                 | § | (JURY DEMANDED)                |
| NTS MIKEDON, L.L.C.             | § |                                |
|                                 | § |                                |
| DEFENDANT                       | § |                                |

**DEFENDANT'S ORIGINAL ANSWER**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE

NTS Mikedon, L.L.C. ("NTS") answers and responds to the First Amended Complaint of Cerda Industries, Inc. and Shormax, Inc. (the "Complaint") and respectfully show:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

The Plaintiffs plead no valid trademark that can be protected.

**THIRD DEFENSE**

The alleged "trademark" lacks any distinctiveness.

**FOURTH DEFENSE**

The alleged "trademark" has been previously used.

**FIFTH DEFENSE**

The Plaintiffs are guilty of Laches.

## **SIXTH DEFENSE**

The Plaintiffs have unclean hands.

### **SPECIFIC ADMISSIONS AND DENIALS**

NTS responds to the Plaintiffs' allegations by correspondingly numbered paragraphs as follows:

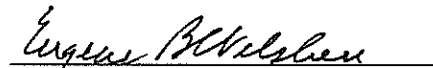
1. This paragraph is merely a statement of legal and factual conclusions. To the extent any facts are alleged, NTS denies them.
2. NTS admits that Plaintiffs claim federal jurisdiction and supplemental jurisdiction.
3. NTS admits the allegations of this paragraph.
4. NTS admits the allegations of this paragraph.
5. NTS admits it does business in Texas.
6. Since NTS denies that any actionable events or omissions have occurred, NTS denies the allegations of this paragraph.
7. NTS has insufficient information to either admit or deny the allegations of this paragraph.
8. NTS denies the allegations of this paragraph.
9. NTS cannot neither admit nor deny Plaintiffs' claim to a federal trademark application. NTS denies that any valid trademark can be issued for the "trademark" Plaintiffs describe in this paragraph.
10. NTS admits that in the past, it purchased equipment from Plaintiff Cerda Industries, Inc. ("Cerda"). The remainder of the allegations in the paragraph are denied.
11. The allegations of this paragraph are denied.

12. NTS admits that the quote has appeared on its web site. The remainder of this paragraph are denied.
13. The allegations of this paragraph are denied.
14. The allegations of this paragraph are denied.
15. The allegations of this paragraph are denied.
16. The allegations of this paragraph are denied.
17. No response required.
18. The allegations of this paragraph are denied.
19. The allegations of this paragraph are denied.
20. The allegations of this paragraph are denied.
21. The allegations of this paragraph are denied.
22. The allegations of this paragraph are denied.
23. No response required.
24. The allegations of this paragraph are denied.
25. The allegations of this paragraph are denied.
26. The allegations of this paragraph are denied.
27. No response required.
28. The allegations of this paragraph are denied.
29. The allegations of this paragraph are denied.
30. The allegations of this paragraph are denied.
31. No response required.
32. The allegations of this paragraph are denied.

33. The allegations of this paragraph are denied.

Wherefore, NTS respectfully prays that all claims against it be dismissed, that it have such other and further relief as to which it may show itself justly entitled, including attorney fees and costs.

Respectfully submitted,



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ATTORNEY -IN-CHARGE FOR      DEFENDANT      NTS  
MIDEDON L.L.C

Of Counsel:

Wilshire Scott & Dyer, P.C.

**Certificate of Service**

The undersigned certifies that a true copy of the foregoing has been served this 10<sup>th</sup> day of June, 2008 by facsimile transmission, as follows:

Barry Heslop, Esq.  
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713-426-0707

  
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Eugene B. Wilshire